

Moorestown Township Ethical Standards Board  
Meeting – June 1, 2011 – 5:30 p.m.  
Moorestown Township – Conference Room, 2 Executive Drive, Suite 9A, Moorestown, NJ

NOTICE OF MEETING: Chairperson, Cynthia Maahs-Knobbs opened the meeting. Board Secretary, Thomas J. Merchel, read the Official Statement, indicating the meeting was being conducted in accordance with the Open Public Meetings Act of 1975.

Attendance:

Daniel Posternock, Member	Glenn Henkel, Member
Scott Cooper, Member	Cindy Maahs-Knobbs, Chairperson
Greg Newcomer, Member	John Piccone, Member (Absent)

Thomas J. Merchel, Deputy Township Manager and Board Secretary  
Karen Maltbie, Recording Secretary

William J. Kearns, Jr., Esquire, Special Counsel

AMEND AGENDA

Madam Chair began by requesting an amendment to the Agenda to include consideration of the May 19, 2011 Annual and Special Meeting Minutes, Resolution 2-2011 and Resolution 3-2011. It was moved by Boardmember Cooper, seconded by Boardmember Newcomer. The motion passed unanimously.

- A. Approval of the May 19, 2011 Reorganization Meeting Minutes. It was moved by Boardmember Henkel, seconded by Boardmember Newcomer. The motion passed unanimously.
- B. Approval of the May 19, 2011 Special Meeting Minutes. It was moved by Boardmember Henkel, seconded by Boardmember Newcomer. The motion passed unanimously.

NEW BUSINESS

- A. Resolution 2-2011 Authorizing a Professional Services Contract to be Awarded to William Kearns, Esquire, As Special Counsel on Certain Legal Matters

The Board Secretary clarified the need for Special Counsel, due to the receipt of a Complaint. Mr. Kearns introduced himself and gave a brief narrative of his qualifications. It was moved by Boardmember Newcomer, seconded by Boardmember Posternock, to adopt Resolution 2-2011. The motion passed unanimously.

- B. Resolution 3-2011 A Resolution Providing for a Meeting Not Open to the Public in Accordance with the Provisions of the New Jersey Open Public Meeting Act, N.J.S.A. 10:4-12.

1. It was moved by Madam Chair, Maahs-Knobbs, seconded by Boardmember Newcomer, to adopt Resolution 3-2011. The motion passed unanimously.

2. It was moved by Madam Chair, Maahs-Knobbs, seconded by Boardmember Newcomer, to go into Closed Session. The motion passed unanimously. At 5:45 p.m. the boardmembers moved into Closed Session.

C. Reopen Public Meeting

Madam Chair, Maahs-Knobbs, reopened the meeting to the public at 6:47 p.m. Mr. Kearns addressed the recusal question of Mr. Cooper regarding participation in these matters. Citing Misckoski v. Local Finance Board, if you disqualified anyone who ever took an advocacy position on any public issue, no one would ever be able to vote on anything. Mr. Kearns advised no conflict of interest for Mr. Cooper.

Mr. Kearns continued with a summation of case law. In Misckoski v. Local Finance Board, an Appellate decision from 2008, in which a council member voted on a Bill to acquire land for Open Space. There were several properties they were looking to acquire and one of the properties was owned by his mother. The Local Finance Board determined that there was a conflict and the Appellate Division said there was not a conflict. The benefit was not sufficiently close to the council member and it wasn't a conflict for the council member to vote on that appropriation because dealing with open space was in accordance with the public interest.

In the matter of Wyzykowski v. Rizas, which was a 1993 decision from the Supreme Court of New Jersey, Rizas was the Mayor of the Township of Neptune in 1989 when he filed an application with the Neptune Township Planning Board to develop a previously vacant lot. The Mayor had no place to go but before the Planning Board. The Supreme Court ruled that the only one on the Planning Board who should be disqualified from voting would be the official on the Board, who has a full time salary position with the Board and was appointed by the Mayor. All of the other members could vote even though they were appointed by the Mayor.

In the matter of John F. Zisa, Mayor, City of Hackensack, Appellate Decision, wherein the Mayor voted on a matter regarding the paving of a municipal parking lot located next door to a business property he owned. Mayor Zisa contacted the City Attorney and inquired whether he had a conflict of interest that would preclude him from voting on awarding the paving contract. After reviewing the statute and considering the matter, the City Attorney advised Mayor Zisa that he did not have a conflict of interest. The Court held that he was entitled to rely on that advice from the City Attorney. He explained that this case encourages elected officials to seek and rely on advice of counsel. A transcript of the April 11, 2011 Township Council meeting clearly indicated the Council member relied on the advice of counsel. Kearns gave synopsis of Boards options to move forward or dismiss complaint.

Board Secretary, Merchel, issued a case reference number of 1-2011 for this complaint. Mr. Merchel also noted that the Board does not have the authority to overturn a council member's vote. That can only be done by the Complainant through the Superior Court. Mr. Kearns confirmed and that if the Ethics Board found a violation of ethical standards exists, it may only impose a fine of \$100.00 - \$500.00.

It was moved by Boardmember Newcomer, seconded by Boardmember Posternock, to dismiss Complaint 1-2011 on the basis it lacks sufficient factual evidence to move forward upon the advice of counsel. The motion passed unanimously. A special meeting will be called and a resolution stating same will be adopted at the next Ethical Standards Board meeting. The Board Secretary will contact the Complainant and advise of the Boards decision. This Complaint will be considered confidential and not available through the Open Public Records Act per precedent set by the Local Finance Board. At this point Mr. Kearns left the meeting.

The Board discussed the Financial Disclosure Statements (FDS) submitted and reaching out to those who have not yet submitted an FDS. Boardmembers discussed what they should be looking for as they continue to review the FDSs and what their specific responsibilities are in this regard. Board Secretary, Merchel indicated the individuals who have not yet submitted FDS' have been contacted and advised that the New Jersey Division of Local Government Services will begin imposing fines for lateness and failure to submit FDSs.

D. Public Comment

Madam Chair, Maahs-Knobbs opened the meeting for public comment. Please state your name and address for the record.

Fred Grayer, 141 East Oak Avenue: Mr. Grayer questioned whether this council member would be able to continue to vote on future issues involving the use of open space funds. What if counsel's advice was wrong? Board Secretary, Merchel advised that this was not for this Board to determine. The Opinion will be made available soon to the public. The Board would need to look at each case individually as they may be brought before them.

Linda Carskadon, 127 Somers Court South: Ms. Carskadon asked if the Ethics Board could make a recommendation to council members to always consider the public's perception of certain matters.

Cephas Green, 320 Farmdale Road: Mr. Green asked if there was an attorney present at the May 19, 2011 Ethics meeting? Madam Chair responded there was no attorney present at that meeting as it was the reorganization meeting and they had just heard of the complaint. Mr. Green then questioned who was paying for this special counsel. Boardmember Cooper explained that Mr. Coleman was the standing solicitor but had recused himself as he felt it inappropriate to investigate this complaint since he had previously advised the council member. The Board asked the Board Secretary to obtain independent special counsel to advise the Board on this matter. The Board Secretary is permitted to enter into a contract for special counsel. No council member was involved in this decision to obtain independent special counsel.

Paul Conlow, 443 North Church Street: Mr. Conlow asked Mr. Cooper if he considered recusal from this matter and why he did not recuse himself. Mr. Cooper responded and explained how seriously he took the question of his recusal and the independent professional opinions he sought. With that Mr. Cooper felt he could offer fair and appropriate participation in this matter.

Nancy Clem, 701 Covington Terrace: Ms. Clem questions, will everyone know the complaint

was brought or what has happened? Board Secretary, Merchel affirms that a Resolution stating the Opinion of the Board will be adopted. The press is at this meeting, the meeting is open to the public and the appropriate process was followed by the Board. Ms. Clem questions the vote being set aside. Board Secretary again explains it is not within this Board's capacity to have a council member's vote set aside.

Betsy Schnorr, 435 East Main Street: Ms. Schorr responds to Ms. Clem clarifying that any future complaints would have to be brought before the Board. Board Secretary, Merchel confirms that those matters would each be addressed at the time they are brought. The Board cannot speculate on future decisions or actions that may or may not be made.

Boardmember Cooper, clarified to the public that there was no secrecy on the part of the Board. The Board followed an appropriate process. This was kept as open as possible in lieu of the fact that the accused is entitled to due process. No one from this Board spoke out on this issue. This process protects every volunteer from frivolous accusations.

Linda Carskadon: Questioned full process to be followed in bringing a complaint. Board Secretary, Merchel reiterated process followed in this case and availability of the complaint form for the public. Ms. Carskadon asks how long confidential records are held. Board Secretary, clarifies they would be held in accordance with the Division of Archives and Records Management schedule. Ms. Carskadon refers to a former case brought before the Ethics Board and asks why a different result was achieved. Board Secretary briefly explained how it was different from this issue.

Jackie Grayer, 141 East Oak Avenue: Ms. Grayer wanted to note how a previous Moorestown Mayor would recuse himself and leave the room at certain times when he felt it was inappropriate for him to participate. Public perception must always be considered. Mr. Conlow, comments, the decision for him to recuse himself is not this Board's responsibility. Public begins to speak independently amongst each other.

Boardmember Cooper, takes back the floor in response to several comments from the public and explains that each case would have to be addressed at the time it is brought before the Board. This Board cannot be lobbied on how they will handle future ethics complaints.

There being no further questions from the public, it was moved by Madam Chair, Maahs-Knobbs, seconded by Boardmember Posternock to adjourn the meeting. The motion passed unanimously. The Board adjourned the meeting at 7:33 p.m.

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Thomas J. Merchel, Board Secretary

Prepared by:  
Karen Maltbie